

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

PEDRO NAVARRO,

Plaintiff,

v.

A. WESTPHAL, VICTORIA TAPIA,
JACKIE FLUAITH, MIKE MCCOURTIE,
LT. ROBERT LONG, JEFFERY UTTECH,
ROY GONZALEZ, SCOTT FRANKS, EARL
X. WRIGHT and BERNARD WARNER,

Defendants.

No. 4:16-cv-05094-EFS

ORDER DENYING MOTION TO AMEND,
ADOPTING REPORT AND
RECOMMENDATION AND DISMISSING
FIRST AMENDED COMPLAINT

BEFORE THE COURT are Plaintiff's Motion for Leave to Amend, ECF No. 14, and his Objection, ECF No. 15, to the Report and Recommendation to Dismiss the First Amended Complaint. Plaintiff, a prisoner at the Coyote Ridge Corrections Center, is proceeding pro se and in forma pauperis; Defendants were not served.

On November 1, 2016, Magistrate Judge Dimke recommended dismissal of the First Amended Complaint as Plaintiff had failed to show any actual injury to his access to court and, even if he could, any § 1983 challenge to a conviction that has not been invalidated would be precluded by *Heck v. Humphrey*, 512 U.S. 477, 486-87 (1994).

On November 14, 2016, Plaintiff filed both his Motion and Objection. He seeks leave to amend to specifically state how his

1 access to the court was frustrated. Plaintiff had been granted the
2 opportunity to do so in the initial Order to Amend or Voluntarily
3 Dismiss, ECF No. 8. He did not do so. He did not present a proposed
4 amended complaint and he has failed to present any facts demonstrating
5 that he was denied access to the court, causing actual injury.

6 Regardless, as stated above and in the Report and
7 Recommendation, even if Plaintiff could demonstrate that his
8 conviction would have been overturned, but for the actions of
9 identified Defendants, he has not shown that his conviction has been
10 invalidated. Therefore, his § 1983 claims would be precluded by *Heck*
11 *v. Humphrey*, and amendment would be futile. Accordingly, Plaintiff's
12 Motion, ECF No. 14, is **DENIED**.

13 In his Objections, ECF No. 15, Plaintiff contends that his
14 assertions were not conclusory and he objects to the finding that his
15 allegations were insufficient to state an access to court claim. He
16 also objects to the dismissal of his First Amended Complaint without
17 leave to amend. He provides no support for his contentions.

18 The Court has reviewed the record and is fully informed. For
19 the reasons set forth above and in the Report and Recommendation, the
20 Court adopts the Report and Recommendation, ECF No. 13, in its
21 entirety, and the First Amended Complaint, ECF No. 10, is dismissed
22 without prejudice to Plaintiff seeking appropriate remedies in state
23 court. Because this was not purely a *Heck* matter, it does not appear
24 that it would count as a strike under 28 U.S.C. § 1915(g). See
25 *Washington v. Los Angeles Cty. Sheriff's Dep't*, 833 F.3d 1048, 1058
26 (9th Cir. 2016).

1 Accordingly, **IT IS HEREBY ORDERED:**

2 1. Plaintiff's Motion, ECF No. 14, is **DENIED**.

3 2. The Report and Recommendation, **ECF No. 13**, is **ADOPTED in**
4 **its entirety**.

5 3. The First Amended Complaint, **ECF No. 10**, is **DISMISSED**
6 **without prejudice** to Plaintiff seeking appropriate remedies
7 in state court.

8 4. The case shall be **CLOSED**.

9 **IT IS SO ORDERED.** The Clerk's Office is directed to enter this
10 Order, enter Judgment, forward a copy to Plaintiff, and CLOSE the
11 file. The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any
12 appeal of this Order would not be taken in good faith and would lack
13 any arguable basis in law or fact.

14 **DATED** this 29th day of December 2016.

15
16 s/Edward F. Shea
EDWARD F. SHEA
17 Senior United States District Judge
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